



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
INTERIM APPLICATION NO.1695 OF 2024
IN
TESTAMENTARY SUIT NO.47 OF 2017
IN
TESTAMENTARY PETITION NO.748 OF 2016**

Yogesh Roy	...	Applicant/Intervener
and		
Nilesh Mahendra Kapadia	...	Petitioner
versus		
Kiran Kishorchandra Balsara	...	Respondent/Caveator
and		
Yogesh Kishorchandra Balsara	...	Proposed Petitioner

Mr. Mehul Shah with Ms. Chaitali Jadhav, for Applicant.

Mr. Munir Merchant with Mr. Javed Dhorajiwala, Mr. Vinit Vaidya i/by MZM Legal LLP for Respondent/Caveator

CORAM: N.J.JAMADAR, J.

DATE : 16 OCTOBER 2024

P.C.

1. Heard the learned Counsel for the parties.
2. This application is preferred by the beneficiary under the purported last Will and Testament of Kishorchandra Lallubhai Balsara (deceased) seeking amendment in the Petition filed for probate of the purported last Will and Testament so as to convert the Petitioner into one for Letters of Administration.
3. The Petition was filed by Nilesh Mahendra Kapadia, executor named in the said Will and Testament of the deceased. Kiran, the son of the deceased

and the brother of the applicant, has filed a Caveat opposing the grant of Probate. Thereupon, the Petition came to be converted into Suit No.47 of 2017.

4. In the application, the applicant avers that the executor, on account of his professional commitments is not in a position to prosecute the Petition and execute the Will. The executor has executed a declaration/affidavit of renunciation dated 2 May 2024 renouncing the execution of the Will. Another executor has already renounced the executorship. Therefore, the applicant who is the beneficiary under the Will, be permitted to be convert the Petition into one for Letters of Administration.

5. Learned Counsel for the Caveator submits that the prayer in the instant application seeking substitution of the applicant in the place of executor is misconceived. The applicant can, at best, seek conversion of the Petition into one for Letters of Administration. In fact, the prayer clause (b) in the application is one for conversion of the Petition into a petition for Letters of Administration with the Will annexed. Thus, I do not find any impediment in allowing the application in terms of prayer clause (b).

6. Hence, the following order :

ORDER

- (i) The application stands allowed in terms of prayer clause (b), which reads as under :

“(b) This Hon'ble Court be pleased to allow the Applicant to convert the aforesaid Testamentary Suit for issuance of Letters of Administration with Will annexed in respect of the assets mentioned in the Schedule at Exhibit C and D of the Testamentary Petition bearing No. 748 of 2016, now identified as Testamentary Suit bearing No. 47 of 2017”;

(ii) Necessary amendment to convert the Petition into one for Letters of Administration be carried out within a period of four weeks from the date of uploading of this order.

(iii) Amended copy of the Petition be served on the Caveator/Defendant within a period of two weeks of carrying out amendment.

(iv) The Caveator/Defendant is at liberty to file additional affidavit, post conversion of the Petition within a period of two weeks of being served with the copy of the amended Petition.

(v) Interim Application stands disposed.

(vi) Post the Petition on 16 December 2024.

(N.J.JAMADAR, J.)